

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

AMENDED DOCKET CONTROL ORDER

Before the Court is Plaintiff’s Motion for Modified Schedule in View of Novel Coronavirus (COVID-19) Outbreak (the “Motion”). (Dkt. No. 117.) Having considered the Motion, the related briefing, and the parties’ presentations at the Telephonic Status Conference held August 20, 2020, the Court is of the opinion that the Motion should be and hereby is **GRANTED-AS-MODIFIED**. It is therefore **ORDERED** that the below schedule of deadlines is in effect until further order of the Court.

<u>Old Date</u>	<u>New Date</u>	<u>Deadline/Hearing</u>
November 16, 2020	February 1, 2021	*Jury Selection – 9:00 a.m. in Marshall, Texas before Judge Rodney Gilstrap
October 30, 2020	December 21, 2020	*Pretrial Conference – 9:00 a.m. in Marshall, Texas before Judge Rodney Gilstrap

October 5, 2020	November 26, 2020	*Notify Court of Agreements Reached During Meet and Confer The parties are ordered to meet and confer on any outstanding objections or motions in limine. The parties shall advise the Court of any agreements reached no later than 1:00 p.m. three (3) business days before the pretrial conference.
October 5, 2020	November 26, 2020	File Sur-reply to Dispositive Motions (including Daubert Motions) and Motions to Strike Expert Testimony
October 1, 2020	November 23, 2020	*File Joint Pretrial Order, Joint Proposed Jury Instructions and Form of the Verdict, Responses to Motions <i>in Limine</i> , Updated Exhibit Lists, Updated Witness Lists, and Updated Deposition Designations.
September 30, 2020	November 23, 2020	Serve Objections to Rebuttal Pretrial Disclosures
September 30, 2020	November 23, 2020	File Reply to Dispositive Motions (including Daubert Motions) and Motions to Strike Expert Testimony
September 25, 2020	November 16, 2020	*Response to Dispositive Motions (including Daubert Motions). Responses to dispositive motions that were filed prior to the dispositive motion deadline, including Daubert Motions, shall be due in accordance with Local Rule CV-7(e), not to exceed the deadline as set forth in this Docket Control Order.2 Motions for Summary Judgment shall comply with Local Rule CV-56.

September 24, 2020	November 16, 2020	Serve Objections to Pretrial Disclosures; and Serve Rebuttal Pretrial Disclosures
September 24, 2020	November 16, 2020	<p>File Motions in Limine</p> <p>The parties shall limit their motions in limine to issues that if improperly introduced at trial would be so prejudicial that the Court could not alleviate the prejudice by giving appropriate instructions to the jury.</p>
September 21, 2020	November 12, 2020	*Notify Deputy Clerk in Charge regarding the date and time by which juror questionnaires shall be presented to accompany by jury summons if the Parties desire to avail themselves the benefit of using juror questionnaires ¹
	November 2, 2020	Serve Disclosures for Supplemental Expert Witnesses
September 14, 2020	October 29, 2020	<p>*File Notice of Request for Daily Transcript or Real Time Reporting.</p> <p>If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with the Court and e-mail the Court Reporter, Shelly Holmes, at Shelly.holmes@txed.uscourts.gov.</p>
September 11, 2020	October 26, 2020	<p>*File Motions to Strike Expert Testimony (including Daubert Motions)</p> <p>No motion to strike expert testimony (including a Daubert motion) may be filed</p>

		after this date without leave of the Court.
September 11, 2020	October 26, 2020	<p>*File Dispositive Motions</p> <p>No dispositive motion may be filed after this date without leave of the Court.</p> <p>Motions shall comply with Local Rule CV56 and Local Rule CV-7. Motions to extend page limits will only be granted in exceptional circumstances. Exceptional circumstances require more than agreement among the parties.</p>
September 11, 2020	October 26, 2020	Deadline to Complete Expert Discovery
September 10, 2020	October 25, 2020	Serve Pretrial Disclosures (Witness List, Deposition Designations, and Exhibit List) by the Party with the Burden of Proof
September 2, 2020	October 17, 2020	Serve Disclosures for Rebuttal Expert Witnesses
August 14, 2020	September 28, 2020	Serve Disclosures for Expert Witnesses by the Party with the Burden of Proof

August 12, 2020	September 28, 2020	Deadline to File Motions to Compel Discovery
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(*) indicates a deadline that cannot be changed without showing good cause. Good cause is not shown merely by indicating that the parties agree that the deadline should be changed.

ADDITIONAL REQUIREMENTS

Mediation: While certain cases may benefit from mediation, such may not be appropriate for every case. The Court finds that the Parties are best suited to evaluate whether mediation will benefit the case after the issuance of the Court's claim construction order. Accordingly, the Court ORDERS the Parties to file a Joint Notice indicating whether the case should be referred for mediation within fourteen days of the issuance of the Court's claim construction order. As a part of such Joint Notice, the Parties should indicate whether they have a mutually agreeable mediator for the Court to consider. If the Parties disagree about whether mediation is appropriate, the Parties should set forth a brief statement of their competing positions in the Joint Notice.

Summary Judgment Motions, Motions to Strike Expert Testimony, and Daubert Motions: For each motion, the moving party shall provide the Court with two (2) hard copies of the completed briefing (opening motion, response, reply, and if applicable, sur-reply), excluding exhibits, in D-three-ring binders, appropriately tabbed. All documents shall be single-sided and must include the CM/ECF header. These copies shall be delivered to the Court within three (3) business days after briefing has completed. For expert-related motions, complete digital copies of the relevant expert report(s) and accompanying exhibits shall be submitted on a single flash drive to the Court. Complete digital copies of the expert report(s) shall be delivered to the Court no later than the dispositive motion deadline.

Indefiniteness: In lieu of early motions for summary judgment, the parties are directed to include any arguments related to the issue of indefiniteness in their Markman briefing, subject to the local rules' normal page limits.

Lead Counsel: The Parties are directed to Local Rule CV-11(a)(1), which provides that "[o]n the first appearance through counsel, each party shall designate a lead attorney on the pleadings or otherwise." Additionally, once designated, a party's lead attorney may only be changed by the filing of a Motion to Change Lead Counsel and thereafter obtaining from the Court an Order granting leave to designate different lead counsel.

Motions for Continuance: The following excuses will not warrant a continuance

nor justify a failure to comply with the discovery deadline:

- (a) The fact that there are motions for summary judgment or motions to dismiss pending;
- (b) The fact that one or more of the attorneys is set for trial in another court on the same day, unless the other setting was made prior to the date of this order or was made as a special provision for the parties in the other case;
- (c) The failure to complete discovery prior to trial, unless the parties can demonstrate that it was impossible to complete discovery despite their good faith effort to do so.

Amendments to the Docket Control Order (“DCO”): Any motion to alter any date on the DCO shall take the form of a motion to amend the DCO. The motion to amend the DCO shall include a proposed order that lists all of the remaining dates in one column (as above) and the proposed changes to each date in an additional adjacent column (if there is no change for a date the proposed date column should remain blank or indicate that it is unchanged). In other words, the DCO in the proposed order should be complete such that one can clearly see all the remaining deadlines and the changes, if any, to those deadlines, rather than needing to also refer to an earlier version of the DCO.

Proposed DCO: The Parties’ Proposed DCO should also follow the format described above under “Amendments to the Docket Control Order (‘DCO’).”

So ORDERED and SIGNED this 26th day of August, 2020.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE